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OFFICE OF PETITIONS

In re Application of

Kim, et al.

Application No. 10/615,840

Filing Date: 10 July, 2003

Attorney Docket No. 053785-5018-02

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DECISION ON PETITION

This is a decision on the petition filed on 21 September, 2004, and considered under 37 C.F.R. §1.53, to obtain a filing date of 10 July, 2003, for Figures 1, 2, 3A - 3C, 3D - 3E, 4, 5A - 5B, 6A - 6B, 7A - 7B, 8A - 8B, as describe in the specification of the application.

The petition is **GRANTED**.

BACKGROUND

This nonprovisional application was deposited on 10 July, 2003.

On 24 August, 2004, the Office mailed a "Notice of Omitted Items in a Nonprovisional Application," (the 24 August Notice) and indicated, *inter alia*, that Figure(s) 1, 2, 3A - 3C, 3D - 3E, 4, 5A - 5B, 6A - 6B, 7A - 7B, 8A - 8B as described in the specification appeared to be missing on deposit of the application.

The 24 August Notice further informed Petitioner that, should he contend that the missing figure was deposited with the rest of the application at the time of filing, he could petition and make a showing to that effect, or he could accept the application as filed, or could submit the missing figure and accept the date of that submission as the date of filing.

The petition filed on 14 September, 2004, states that it is accompanied, *inter alia*, by a date-

stamped receipt card itemizing the contents of the application received by the Office and copies of Figures 1, 2, 3A - 3C, 3D - 3E, 4, 5A - 5B, 6A - 6B, 7A - 7B, 8A - 8B as described in the specification.

ANALYSIS

A review of the record reveals that:

- the instant application was deposited with the Office on 10 July, 2003; and
- the receipt card (see: MPEP §503¹) is date stamped ("JUL 10 2003") and provides, *inter alia*:

* * *

3. Drawings - 11 sheets - 21 total figures

* * *

¹ MPEP §503 provides in pertinent part:
§503 Application Number and Filing Receipt

* * *

A return postcard should be attached to *each* patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

* * *

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items. Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO. (Emphasis supplied.)

The record further discloses that:

- the drawing sheets that the Office acknowledges receiving are two sheets with figures 9A - 9C and 10A - 10B, for a total of five figures; and
- the missing figures are nine sheets with 16 figures (1, 2, 3A - 3C, 3D - 3E, 4, 5A - 5B, 6A - 6B, 7A-7B, 8A - 8B).

Because the return postcard receipt properly itemizes the contents of the application package in accordance with MPEP §503, the Office concludes that the Figure(s) 1, 2, 3A - 3C, 3D - 3E, 4, 5A - 5B, 6A - 6B, 7A - 7B, 8A - 8B as described in the specification were submitted on 27 May, 2004, and subsequently was misplaced in the Office.

Accordingly, the petition under 37 C.F.R. §1.53 is **granted**; the petition fee is waived and it appears that it was not charged; and the Notice mailed on 24 August, 2004, hereby is withdrawn as to Figure(s) 1, 2, 3A - 3C, 3D - 3E, 4, 5A - 5B, 6A - 6B, 7A - 7B, 8A - 8B as described in the specification.

This application is released to the Office of Initial Patent Examination for further processing with a filing date of 10 July, 2003, for the entire application and in particular for Figure(s) 1, 2, 3A - 3C, 3D - 3E, 4, 5A - 5B, 6A - 6B, 7A - 7B, 8A - 8B as described in the specification using:

- pages 1 - 31 (Specification, Claims, Abstract), and 11 sheets of drawings (Fig(s). 9A - 9C and 10A - 10B) deposited on 10 July, 2003; and
- Fig(s).1, 2, 3A - 3C, 3D - 3E, 4, 5A - 5B, 6A - 6B, 7A - 7B, 8A - 8B as described in the specification, deposited on 21 September, 2004;
- with direction to OIPE to correct Office records to reflect that 31 pages of specification (description, claims and abstract) and 11 sheets of drawings were present on filing on 10 July, 2003, and forward to Petitioner a corrected filing receipt setting forth a filing date of 10 July, 2003, reflecting therein that 31 pages of specification (description, claims and abstract) and 11 sheets of drawings were present on filing.

Thereafter, the application will be considered by the examiner in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.

A handwritten signature in black ink, appearing to read "John J. Gillon, Jr.", with a stylized flourish at the end.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions